Connecticut Bar Association

30 Bank Street
New Britain, CT 06051
T. (860) 223-4400
F. (860) 223-4488

www.ctbar.org

Testimony of David M. Levine
Business Law Section
Co-Chair of the LLC Committee
Connecticut Bar Association

In SUPPORT of
H.B. 5259, "An Act Concerning Adoption of The Connecticut Uniform Limited Liability Company Act"

Judiciary Committee
February 29, 2016

Senator Coleman, Representative Tong and Honorable Members of the Joint Judiciary Committee: Thank you for the opportunity to appear before the Judiciary Committee today.

My name is David M. Levine. I have been a lawyer in private practice in Connecticut since 1986. I am a shareholder in the Bridgeport office of the law firm of Cohen and Wolf, P.C.

I co-chaired, along with my colleague Marcel Bernier, the Limited Liability Company Act Drafting Subcommittee of the Business Law Section of the Connecticut Bar Association.

For 30 years my practice has been concentrated on closely held businesses. I regularly form LLCs and corporations of many shapes and sizes. I most frequently incorporate my clients' LLCs and corporations in Connecticut, but when the business arrangement among the LLC members is complex and not straightforward, for the past many years I have had to pause and consider forming my client's entity in Delaware. This is because, historically, Delaware law has provided lawyers and their clients with greater guidance and predictability. The courts there have adjudicated a wide variety of business disputes, interpreting business entity statutes that have kept up with the times.

The current Connecticut Limited Liability Company Act has not kept up with the times. It became the law in Connecticut in 1993 – almost 23 years ago. At that time, it was an alternative to partnerships, whose partners faced personal liability for company debts, and corporations whose shareholders were saddled either with double taxation or, in the case of s-corporations, restrictions on who the owners could be. In 1993 an LLC was a new entity type that was largely untested. Fast forward 23 years and the overwhelming majority of new business entities formed in Connecticut are limited liability companies.

Connecticut Bar Association

30 Bank Street
New Britain, CT 06051
T. (860) 223-4400
F. (860) 223-4488

www.ctbar.org

Unfortunately, case law in Connecticut has been slow to keep up with the pace of LLC formations and the disputes that arise within them. Connecticut judges have struggled to interpret and decide cases on a consistent basis. The growing number of states adopting the Uniform Limited Liability Company Act stands in stark contrast to the antiquated Connecticut LLC Act, which has exacerbated the problem. Connecticut judges are interpreting the current act in many instances with little precedent from which to draw. When a client becomes embroiled in a dispute with fellow LLC members, litigators are often forced to explain to the client that the dispute in question may be a case of "first impression" to the court. Those of you lawyers on this panel know that many, many research memos begin with the sentence "[T]here is no Connecticut case on point."

The bill before you, House Bill 5259, will go far to eradicate the dearth of case law with which we business lawyers contend. It is patterned largely after the Uniform Limited Liability Company Act, originally drafted by the Uniform Law Commission (ULC), the members of which are among the nation's foremost thinkers on non-corporate entities. Some 16 states have already adopted the Uniform Act. A common body of case law has and will continue to coalesce around this uniform act. Connecticut lawyers and judges will have greater guidance on questions of interpretation. Parties entering into business relationships and negotiating operating agreement language will be able to better predict and understand the meaning of the language to which they are agreeing. This will keep Connecticut competitive in the area of business formations and business-friendly legislation.

Our committee did not merely adopt blindly the Uniform Act language verbatim. We were mindful of current Connecticut LLC law and did our best to preserve it, even where it diverted from the Uniform Act. Our committee was comprised of a cross section of solo and small firm lawyers, medium-sized and large firm lawyers and a lawyer for the Connecticut Secretary of State. Our orientation was decidedly focused on closely-held businesses, which is the bulk of Connecticut's business entity constituency.

You have already received testimony from my co-chair on this drafting committee, Marcel Bernier, and from CBA Business Law Section Chairperson Mark Sklarz, who also served the committee with distinction drafting among the most substantive provisions of the Act. Both gentlemen highlighted certain provisions contained with HB 5259 before you. I have highlighted a few more as follows:

- Section 51(a) of ULLCA was modified in the Connecticut version to preserve existing substantive Connecticut partnership law with regard to the effect of charging orders.

- Section 51(c) through (f) of ULLCA were modified in the Connecticut version, which follows a number of other Uniform Act states in designating the entry of a charging order as the exclusive remedy by which a judgment creditor may satisfy the judgment from the debtor's membership interest (called a "transferable interest") in the Act.

Connecticut Bar Association

30 Bank Street
New Britain, CT 06051
T. (860) 223-4400
F. (860) 223-4488

www.ctbar.org

- Section 56(a)(2) of ULLCA provides as a default rule that a majority-in-interest must agree to dissolve the LLC and is consistent with existing substantive Connecticut law (§34-206) but represents a departure from the Uniform Act which requires unanimous consent of members. This was one of those instances in which our committee elected to preserve existing Connecticut law as a default rule to avoid disruption to existing business relationships and because the committee felt it was the better rule as a matter of policy.

- Section 56(a)(4) of ULLCA contains a clarification not contained in the Uniform Act that in the absence of a principal office in Connecticut, the court having jurisdiction over a dissolution action is the district in which the registered agent is located.

- Section 56(b) authorizes the court to order a remedy other than dissolution in an action for judicial dissolution under 701(a)(5)(a) or (b). It should be noted that this is an additional remedy not provided under existing substantive Connecticut law.

- Sections 81 through 97 deal with fundamental change transactions such as mergers and were carefully drafted to remain consistency between ULLCA and the Connecticut Entity Transactions Act (CETA).

- Section 9 requires professional services LLCs formed on or after the date of enactment to include the word "professional" with the words "limited liability company" in their name, or to use the designation "PLLC" instead of LLC.

Thank you for allowing me the opportunity to testify before the Judiciary Committee.

Respectfully submitted,

David M. Levine, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, Connecticut 06604